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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

National Crime Authority Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of
the Hon. M.J. Duffy M.P., Minister for Communications
Minister Representing the Attorney-General)

OUTLINE

The purpose of this Bill is to establish a National Crime Authority with the function of investigating certain categories of organised crime and official corruption, with a view to prosecution action where appropriate.

The Bill enables the relevant Commonwealth, State and Northern Territory Ministers, with the approval of an Inter-Governmental Committee in the case of State and Northern Territory matters, and after consulting the Inter-Governmental Committee in the case of Commonwealth matters, to refer particular matters involving serious breaches of the criminal law within these categories to the Authority for investigation.

The Bill provides for the Authority's three members to be nominated by the Commonwealth, the Standing Committee of Attorneys-General and the Australian Police Ministers Council respectively.

The Bill gives the Authority powers necessary to its functions; these powers are made subject to proper limitations and safeguards to protect the essential rights of individuals.

NOTES ON CLAUSES

PART I - PRELIMINARY

- Clause 1 - This states the title of the Bill.
- Clause 2 - The date of operation is dealt with.
- Clause 3 - Repeal of National Crimes Commission Act 1982.
- Clause 4 - ~~Interpretation~~.
- Clause 5 - Act to bind the Crown in right of the Commonwealth and Norfolk Island only.
- Clause 6 - Extension of the Act to all external Territories.

PART II - THE NATIONAL CRIME AUTHORITY

- Clause 7 - Establishment of National Crime Authority constituted by a Chairman and two (2) members, all appointed by the Governor-General.
- Clause 8 - Establishment and constitution of Inter-Governmental Committee of Ministers representing the Commonwealth and participating States.
- Clause 9 - This clause states the functions of the Inter-Governmental Committee; to consider approval of matters for reference by the relevant Ministers to the Authority for investigation; to monitor the Authority's work; to receive and transmit reports of the Authority to Governments.
- Clause 10 - This enables the Authority to request the Inter-Governmental Committee to approve a matter being referred by a Minister or Ministers to the Authority for investigation. The Authority shall make such a request in writing and may make written submissions.
- Clause 11 - This clause states the general functions of the Authority as follows: to investigate matters being circumstances or allegations of certain types of offences against Commonwealth, State or Territory laws (defined in Clause 4, as being offences carrying a penalty of three (3) years imprisonment or more, committed by more than one person on a planned and organised basis, and which involve theft, fraud, tax evasion, currency violations, illegal drug dealings, obtaining financial benefit by vice engaged in by others, extortion, violence, or bribery or corruption of

or by officials, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal exportation or importation of fauna into or out of Australia, and the like); to arrange for and coordinate investigations by Task Forces and the like; and to collect, analyse and disseminate criminal information and intelligence in co-operation with the Australian Bureau of Criminal Intelligence.

The special functions are to investigate, pursuant to references given by the relevant Commonwealth or State Ministers matters relating to relevant criminal activities of the kind referred to above.

The coercive powers of the Authority to summon witnesses and compel the production of documents are limited, by succeeding Clauses (e.g. Clause 25) to special investigations pursuant to references.

- Clause 12 - This indicates that the Authority in performing its functions is to assemble and furnish to the relevant Attorney-General, or law enforcement agency, admissible evidence for use in prosecutions: to make, as a result of performance of its other functions, recommendations to the relevant Minister for reform of the law, administrative practices and of administration of the Courts in relation to offences of the kinds referred to above. Sub-clause (4) makes it clear that interviewing of persons suspected of having committed offences, (apart from where a summons has been served) is to be done by police officers.
- Clause 13 - Provides for the giving of Commonwealth references to the Authority by the Commonwealth Minister.
- Clause 14 - Provides for the giving of State references to the Authority by relevant State Ministers.
- Clause 15 - Provides for members of the Authority, with the consent of the Inter-Governmental Committee and the approval of the Commonwealth Minister, to be able to exercise concurrent functions and powers conferred by State law.
- Clause 16 - Provides that, except in proceedings by an Attorney-General, the validity of a reference to the Authority may not be challenged on the ground of lack of approval of the Inter-Governmental Committee or consent of the Minister.
- Clause 17 - Requires the Authority, so far as practicable, to cooperate with law enforcement agencies.
- Clause 18 - Provides for the Minister (with the agreement of the State Minister where relevant) to give published directions and furnish guidelines to the Authority.
- Clause 19 - Provides for necessary and incidental powers of the Authority.
- Clause 20 - This gives the Authority to require information from Commonwealth agencies, (subject to prescribed exceptions including taxation information). This is subject to the defence of reasonable excuse.
- Clause 21 - This provides for the Commonwealth Minister to make arrangements with State Ministers for the Authority to receive information and intelligence as to relevant criminal activities, and for the Authority to make like arrangements with private bodies or persons.

- Clause 22 - Provides that the Authority may apply to a Judge for the issue of a search warrant in respect of things connected with the Authority's investigations.
- Clause 23 - Provides for the issue by a Judge of search warrants upon application by telephone in urgent cases.
- Clause 24 - The Authority may, in certain circumstances, apply to a Federal Court Judge for an order directed to a person summoned as a witness by the Authority to show cause why he should not be ordered to deliver up his passport to the Authority for a period of up to one month (which period may be extended by the Court to not more than three months). A person served with an order to show cause commits an offence if he leaves Australia before the matter is dealt with by the Court or before he has complied with its order and has had his passport returned to him. The Court may revoke the order upon application by the person.
- Clause 25 - All Hearings of the Authority are to be in private. Offences of unauthorised presence at private hearings and publication of evidence or other information contrary to a direction of the Authority are created.
- Clause 26 - Provides for payment to witnesses of attendance fees.
- Clause 27 - Provides for the provision by the Commonwealth of legal and financial assistance to witnesses in certain cases.
- Clause 28 - Powers to summon witnesses and take evidence in respect of matters referred to the Authority for investigation are provided for. The Authority may dispense with the requirement to set out in the summons the general nature of the matters it intends questioning the person upon if satisfied that to do otherwise would prejudice effective investigation. However, even where such notice is given, the Authority may ask questions on other matters relevant to the special investigation in hand.
- Clause 29 - This gives a member of the Authority power, in a special investigation, to issue a notice requiring a person to attend before a member of the Authority or one of its staff to produce specified documents or things relevant to the investigation.

This is subject to reasonable excuse, including self-incrimination and there is provision for ultimate review of claims of reasonable excuse by the Federal Court of Australia under Clause 32.

Clause 30 - Creates offences of failure by witnesses, without reasonable excuse, to attend, to be sworn, to answer questions or produce documents or things. Except where an immunity from use in evidence has been given, self-incrimination is available to natural persons as an excuse for not answering questions or failing to produce documents or things as required by the Authority. Self-incrimination may not be claimed in respect of business records. Legal professional privilege is also recognised.

Clause 31 - This provides for the Authority to apply to a Federal Court Judge for a warrant for the arrest of a witness who has been ordered to surrender his passport, where that witness is likely to leave Australia to avoid giving evidence.

Clause 32 - This provides for application to the Federal Court of Australia by persons claiming entitlement to resist the production of information or documents, or to answer questions at an Authority hearing or under other procedures for production, to review decisions of the Authority in that regard.

Clause 33 - Creates an offence of giving false or misleading evidence at a hearing of the Authority.

Clause 34 - This provides for steps to be taken to protect witnesses from injury, intimidation or harassment.

Clause 35 - Creates an offence of obstructing or hindering the Authority or disrupting a hearing before the Authority.

Clause 36 - Members of the Authority and legal practitioners and witnesses before the Authority are accorded protection and immunity of the same kind as apply to a Justice, barrister or witness respectively in proceedings in the High Court.

Clause 37 - Terms and Conditions of appointment of members of the Authority are dealt with.

Clause 38 - Remuneration and allowances of members of the Authority are dealt with.

- Clause 39 - Provides that the appointment of a holder of a Commonwealth judicial office as a member of the Authority does not affect his tenure of that judicial office.
- Clause 40 - Granting of leave of absence by the Attorney-General to a member of the Authority is dealt with.
- Clause 41 - Resignation of members of the Authority is dealt with
- Clause 42 - Disclosure of direct or indirect interests of members of the Authority and their consequent disqualification from deliberations or decisions of the Authority are dealt with
- Clause 43 - Termination of the appointments of members of the Authority is dealt with.
- Clause 44 - Appointment of an Acting Chairman of the Authority in certain circumstances is provided for.
- Clause 45 - Appointment of Acting Members of the Authority in certain circumstances is provided for.
- Clause 46 - Procedures and quorum at meetings of the Authority are dealt with.
- Clause 47 - Provides that the Authority's staff are to be engaged under the Public Service Act 1922 and gives the Chairman the powers of a Public Service Permanent Head in this regard.
- Clause 48 - Engagement of consultants by the Chairman with the approval of the Minister or his delegate is dealt with.
- Clause 49 - Secondment of staff to the Authority from the Australian Federal Police, Commonwealth authorities or from State authorities by arrangement is provided for.
- Clause 50 - Appointment by the Attorney-General of Counsel assisting the Authority is dealt with.
- Clause 51 - Creates an offence of unauthorised recording, divulging or communication, by any member of the Authority or of its staff, of information acquired in the performance of duties under the Act, and provides that such persons shall not be required to divulge or communicate matters, documents or things to a Court, except in proceedings by or

against the Authority, or for the purposes of the Act, or for the purposes of a prosecution resulting from an investigation by the Authority.

PART III PARLIAMENTARY JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY

- Clause 52 - This provides for a Joint Parliamentary Committee
- Clause 53 - to monitor the performance of the Authority,
- Clause 54 - examine its Annual Reports and to report on
- Clause 55 - certain matters to Parliament. Sub-Clause 55(2) provides that the Committee is not to investigate matters of relevant criminal activity nor to reconsider findings of the Authority.

PART IV MISCELLANEOUS

- Clause 56 - This provides for the transfer to the Authority of all materials held by the Costigan Royal Commission under the relevant Letters Patent at the expiration of that Commission.
- Clause 57 - This provides a special streamlined procedure under the Administrative Decisions (Judicial Review) Act 1977 whereby persons aggrieved by decisions of the Authority can seek review by the Federal Court of Australia without undue delay which might hamper the work of the Authority.
- Clause 58 - The Minister may make administrative arrangements with State Minister to make available holders of State judicial or other offices to hold office as members of the Authority, and officers or employees of State Police Forces or other State authorities to perform services for the Authority.
- Clause 59 - This requires the Authority to keep the Minister and, in relation to functions relating to a State reference, the appropriate State Minister, informed of its operations. The Authority is to furnish reports of findings of its special investigations to the Inter-Governmental Committee for transmission to Governments, with the exception that where public disclosure could prejudice the safety or reputation of persons or law enforcement operations, a separate report shall be furnished to the Minister or relevant State Minister.

The Authority may furnish information as to offences to the relevant law enforcement agencies of the Commonwealth or a State or Territory.

Similarly the Authority may furnish to departments and authorities of the Commonwealth or a State or Territory including authorities responsible for taking civil remedies by the Crown information relating to the performance of their functions.

The Authority shall not publish a report finding that an offence has been committed or recommending prosecution, unless the finding is expressed to be based on evidence admissible in a prosecution.

Clause 60 - This provides for public sittings (as opposed to hearings under Clause 25) and bulletins to enable the Authority to inform the public as to the general conduct of its operations but, not so as to make any disclosure prejudicing the safety, reputation or fair trial of persons.

Clause 61 - Provides for the making of an Annual Report to Parliament by the Authority, covering matters referred to it, patterns, trends and statistics of criminal activity, any recommendations for changes in the law or administrative action, the general nature and the extent of information furnished to law enforcement agencies, particulars of requests made by the Authority for references to it, particulars of court proceedings relating to the Authority and the extent to which prosecutions have resulted from its investigations.

However, such report shall not identify persons as having committed or being suspected of having committed offences, unless convicted. Further the Authority shall take reasonable care not to reveal a person's identity if to do so might prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence.

The Inter-Governmental Committee may make comments on the Authority's Annual Report, which are to be tabled along with it.

Clause 62 - This provides for the making of necessary regulations.

Clause 63 - This provides that the Act shall cease to be in force at the expiration of 5 years from its commencement.

The Schedule sets out prescribed secrecy provisions for the purposes of Clause 20 relating to the provision of information to the Authority by Commonwealth agencies.